

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

EVELYN PEREZ,

Plaintiff,

v.

Case No: 5:19-cv-661-Oc-30PRL

LAKE COUNTY ROWING
ASSOCIATION and THE CITY OF
CLERMONT, FLORIDA,

Defendants.

ORDER

THIS CAUSE came on for consideration upon the Report and Recommendation submitted by Magistrate Judge Philip R. Lammens (Dkt. 20), recommending that the City of Clermont's ("the City") motion to dismiss be denied. The City filed an objection (Dkt. 21) to the Report and Recommendation and Plaintiff filed a response in opposition to the objection (Dkt. 24).

In the Report and Recommendation, the Magistrate Judge concluded that Plaintiff has sufficiently stated a claim against the City under Title II of the ADA and the Rehabilitation Act based on Plaintiff's allegation that the City owns the Clermont Boathouse and either donates or rents it to the Lake County Rowing Association. In its objection, the City argues that the Magistrate Judge misapplied the law because its status as the owner or lessor of the Clermont Boathouse does not impose liability on the City. The Court disagrees and concludes that the Magistrate Judge did not misapply the law. The Magistrate Judge relied upon case law holding that a public entity is subject to Title II

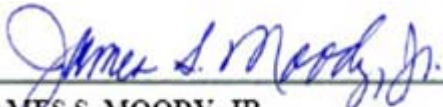
of the ADA as a landlord for leasing or renting out its facilities to non-public entities. *See Assoc. for Disabled Americans, et al., v. City of Orlando*, 153 F.Supp.2d 1310, 1318 (M.D. Fla. 2001), *quoting Levy v. Mote*, 104 F.Supp.2d 538, 543 (D. Md. 2000) and *Johnson v. Saline*, 151 F.3d 564, 571 (6th Cir. 1998); *see also Schutz v. City of San Diego, et al.*, No. 3:13-cv-2992-CAB, 2016 WL 11621283, at *4 (S.D. Cal. June 29, 2016). Accordingly, the Court concludes that Plaintiff has sufficiently stated a claim against the City to survive the motion to dismiss stage.

After careful consideration of the Report and Recommendation of the Magistrate Judge in conjunction with an independent examination of the file, the City's objection and Plaintiff's response, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be adopted, confirmed, and approved in all respects.

ACCORDINGLY, it is therefore, **ORDERED AND ADJUDGED**:

1. The Report and Recommendation (Dkt. 20) of the Magistrate Judge is adopted, confirmed, and approved in all respects and is made a part of this order for all purposes, including appellate review.
2. The City of Clermont's motion to dismiss (Dkt. 8) is denied.
3. The City of Clermont shall file an Answer to Plaintiff's Complaint within fourteen (14) days of this Order.

DONE and **ORDERED** in Tampa, Florida, this 13th day of April, 2020.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies Furnished To:
Counsel/Parties of Record